

SENATE BILL 1904

By Yager

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 21, relative to disability discrimination.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 21, is amended by adding the following as a new part:

4-21-1101.

As used in this part:

(1) "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a reasonable accommodation;

(2) "Discrimination against a qualified individual on the basis of disability" includes:

(A) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the person's opportunities or the status of an application or employee because of a disability of the applicant or employee;

(B) Utilizing standards, criteria, or methods of administration that have the effect of discriminating on the basis of disability;

(C) Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; and

(D) Denying a reasonable accommodation, including, but not limited to:

(i) Not making a reasonable accommodation for any known physical or mental limitation of an otherwise qualified individual with a disability who is an applicant or employee, unless an employer can demonstrate that the accommodation would impose a direct threat or create an undue hardship on the operation of the business of the employer; or

(ii) Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if the denial is based on the need of the employer to make a reasonable accommodation for a physical or mental limitation of the employee or applicant;

(3)

(A) "Qualified Individual" means an individual who, with or without a reasonable accommodation, can perform the essential functions of an employment position;

(B) "Qualified individual" does not include an employee or applicant who is currently engaged in the illegal use of drugs, when the employer acts on the basis of such use; and

(C) For purposes of the definition of "qualified individual" under subdivision (3)(A), consideration must be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, the description must be considered as evidence of the essential functions of the job;

(4)

(A) "Reasonable accommodation" means a modification or adjustment to a job, the work environment, or the manner in which job

functions are typically performed that allows a qualified individual with a disability to apply for a job, perform functions of the job, or enjoy equal access to the benefits and privileges of employment that are available to other individuals in the workplace; and

(B) "Reasonable accommodation" may include, but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; or

(ii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials, or policies, or other similar accommodations for individuals with disabilities; and

(5) "Undue hardship" means an action that is significantly difficult or expensive, upon consideration of the following factors:

(A) Nature and cost of the accommodation;

(B) Overall financial resources of the employer; and

(C) Type of operation or operations of the employer.

4-21-1102.

An employer shall not engage in discrimination against a qualified individual on the basis of disability with respect to job application procedures; the hiring, advancement, or discharge of employees; employee compensation; job training; or other terms, conditions, and privileges of employment.

4-21-1103.

(a) It is a defense to a charge of discrimination under § 4-21-1102 if an employer proves that:

(1) Alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out, or otherwise deny a job or benefit to, an individual with a disability are job-related and consistent with business necessity; and

(2) The essential functions of the job cannot be accomplished by providing a reasonable accommodation.

(b) If an employer demonstrates that an accommodation would impose a direct threat or create an undue hardship on the operation of the business of the employer, the employer is not required to make the accommodation.

(c) Nothing in this part preempts, modifies, or amends any state or local law applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, and the protection of the public health cannot be eliminated by the provision of a reasonable accommodation.

4-21-1104.

A violation of this part by an employer is a discriminatory practice for the purposes of part 3 of this chapter, and any person subject to such discriminatory practice is entitled to the procedures and remedies set forth under part 3 of this chapter.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.